

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 v.) Case No. 05-cv-329-GKF(SAJ)
)
 TYSON FOODS, INC., et al.,)
)
 Defendants.)

**STATE OF OKLAHOMA'S REPLY IN FURTHER SUPPORT OF ITS "OBJECTION
TO THE AMENDED SCHEDULING ORDER [DKT #1376]" [DKT #1470]**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State") respectfully submits this reply in further support of its "Objection to the Amended Scheduling Order [DKT #1376]" [DKT #1470] ("Objection").

A. The State's Objection is timely

Defendants first argue that the State's Objection is untimely because the State did not file its objection within ten days after receiving Magistrate Judge Joyner's Amended Scheduling Order on November 15, 2007. Defendants' Response, pp. 4-5 [DKT #1506]. Defendants' argument ignores the fact that the State sought reconsideration of the Amended Scheduling Order. *See* DKT #1386. On January 15, 2008, Magistrate Judge Joyner denied reconsideration of the issue on which the State brings its objection. *See* DKT #1459. On January 25, 2008, ten days after the entry of Magistrate Judge Joyner's reconsideration order, the State filed its Objection. *See* DKT #1470.

It is well-established that the filing of a motion for reconsideration tolls the time to file an objection. *See, e.g., Norex v. Access Industries, Inc.*, 2003 WL 21872389, *1 (S.D.N.Y. Aug. 7, 2003) (" . . . during the pendency of a motion for reconsideration before a magistrate judge, the time for filing an objection to the District Court is tolled"); *Fox Industries, Inc. v. Gurovich*, 2005 WL 2456896, *2 (E.D.N.Y. Oct. 5, 2005) (same; reasoning that "[a]s a practical matter, it would make no sense for a District Judge to decide an appeal pursuant to Rule 72(a) while the order in question was still under consideration by the Magistrate Judge, who might change all or some of the order on reconsideration"); *Tomlinson v. Allstate Indemnity Co.*, 2007 WL 404698, * 2 (E.D. La. Feb. 1, 2007) (same); *American Hardware Manufacturers Association v. Reed Elsevier, Inc.*, 2007 WL 1610455, *6 (N.D. Ill. Feb. 13, 2007) (same). Simply put, Defendants are wrong. The State's filing of its motion for reconsideration tolled the objection deadline under Rule 72(a). The State's Objection is timely.

B. It is an abuse of discretion to require disclosure of all relief-related expert reports (except damages reports) at the same time as the disclosure of the causation and injury-related reports

Notably, nowhere in their Response do Defendants seriously dispute the sequential logic of the State's position -- namely, that in a complex environmental matter such as this, the first step of analysis must be to characterize the injuries to the environment, and after the nature and extent of the injuries are determined, the various forms of relief that are available to address that injury are then analyzed. Put another way, the character of the injury necessarily determines the type and extent of the relief, and thus relief cannot be fully determined until the injuries are characterized. Indeed, the Court itself recognized the logic of this demarcation. *See* Reconsideration Order, p. 2 [DKT # 1459] ("The Court understands State's arguments for a natural demarcation between relief and causation issues"). However, the Court did not apply this

logic, but rather stood by the Amended Scheduling Order. This was error, for all the reasons set forth in the State's Objections. *See* DKT #1470.

Conclusion

For the reasons stated herein and in its Objection, the State respectfully requests that its Objection be sustained.

Respectfully Submitted,

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